IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 77 OF 2006
WITH
CIVIL APPLICATION NO. 199 OF 2006

1. Smt. Adelina Vaz,
   W/o late Rosario Vaz,
   aged 66 years, housewife,

2. Shri Socorro Vaz,
   S/o late Rosario Vaz,
   Aged 43 years, businessman,

3. Smt. Lucy Vaz,
   W/o Shri Socorro Vaz,
   Aged 41 years, housewife,

4. Shri Benny Vaz,
   S/o late Rosario Vaz, Aged 35 years,
   businessman, All r/o H. No. 230,
   Medel, Pequeno, Salcete, Goa. .... Appellants

Versus

1. Smt. Maria Silvia Barreto Pereira,
   Widow of late Allen Pereira, Landlady,
   major of age, R/o H. No. 396, Muxmuti,
   Comba, Margao, Salcete, Goa.

2. Smt. Magdalena Pereira,
   Widow, last r/o H. No. 230,
   Madel, Pequeno, Salcete, Goa.
   (since deceased represented by
   her unknown legal heirs)
   (Deleted in view of order on
   exbt. 10 dated 13/10/2004) .... Respondents

Shri Nitin Sardessai, Advocate for the Appellants.

Shri C.A. Ferreira with Shri R. Soares and Shri G. Teles, Advocates for Respondent No.1.

CORAM : **P.V. KAKDE, J.**

DATE : **21st NOVEMBER, 2006**

ORAL ORDER :

This appeal is aimed against the judgment and order passed by the Additional District Judge, South Goa, Margao dismissing the Regular Civil Appeal No. 101 of 2004 and confirming the judgment and order passed by the trial Court which was an order on application filed by the present appellants raising objections under Order 21 Rule 97 of the Civil Procedure Code, holding that the appellants failed to prove that the objections raised by them under Order 21 Rule 97 of the Civil Procedure Code were sustainable.

2. The present appellants resisted the execution of the decree passed in Regular Civil Suit No. 127 of 1995 which came to be rejected. Respondent No.1 is the original plaintiff/decree holder and the appellants filed the objections in the execution proceedings no. 32 of 2002 under

Order 21 Rule 97 of the Civil Procedure Code at Exhibit 14 and the same was also rejected.

3. The plaintiff/decree holder filed a suit, wherein it was claimed that she was the sole owner in possession of the property wherein there existed a house. The said house was earlier occupied by one mundkar namely Smt. Antoneta Pereira who was residing in the suit house with the consent of the plaintiff and prior to that with the consent of predecessor in title of the plaintiff. It was claimed that somewhere in November, 1984 the defendant/judgment debtor trespassed into the suit house claiming to be the sister of the mundkar and also claimed mundkarial rights. The Mamlatdar, by order dated 13/11/1984 rejected the claim of the defendant with regard to her right as mundkar. Inspite of this, the defendant/judgment debtor continued to reside in the suit house without the consent of the plaintiff. The plaintiff also noticed somewhere in the month of May, 1995 the defendant made extensions in the suit structure and it was also observed that the defendant was not actually staying in the said structure but used to visit occasionally. Ultimately, the suit came to be decreed. As a result of which Executive Proceedings were filed. During the said proceedings, the present appellants moved an application in Execution

Proceedings vide Exhibit 14 under Order 21 Rule 97 of the Civil Procedure Code, raising objections regarding execution of such decree. The claim of the appellants was that they were residing in the property since last more than 40 years and the decree holder was fully aware of the said facts. It was also claimed that the decree holder has obtained the decree against the deceased judgment debtor without disclosing to the Court that the house was occupied by the appellants. On such and other grounds, the present appellants claimed independent right as mundkars in the said property and not through the judgment debtor. The claim was contested by the decree holder stating that it was nothing but an attempt to delay the matter. The trial Court after hearing both the parties, came to the conclusion that the claim of the appellants was baseless and, therefore, the application came to be rejected. The appeal was filed in the District Court. The Additional District Judge, after hearing both the parties also dismissed the appeal.

Hence, the present appeal.

4. At the outset, it may be noted that the learned Counsel for the appellants has sought to raise the substantial question to the effect that whether the order of the Hon'ble Appellate Court suffers from perversity and vice of non-application of mind as the Hon'ble Appellate Court has

arrived at findings even without referring to and discussing the documents produced by the appellants namely, Election Roll, Ration Card, Judgment in the earlier suit which clearly showed that the appellants are in possession of the suit house independently on their own even prior to the filing of the suit.

5. Both the learned Counsel took me through the record including the contents of the judgment of the lower appellate Court. It appears that the appellate Court has concluded that the application Exhibit 14 filed by the appellants did not show anywhere that they had any independent right over the suit structure. There was only a stray statement to the effect that the decree holder was fully aware that the appellants were residing in the suit premises as mundkars for the last more than 40 years. However, it was held that apart from this statement, which did not give clear idea about the claim of the appellants over the suit house, there was no other statement showing any independent right to resist the execution of a decree. It was submitted on behalf of the appellants that documents produced by them were not even considered by the appellate Court, which amounts to perversity. In this regard, my attention was invited by the learned Counsel for the respondents to the ruling of the Apex Court in the case of ***Silverline***

Forum Pvt. Ltd. Versus Rajiv Trust **(1998) 3 SCC 723**, wherein the Apex Court observed that the Executing Court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. The question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry of collection of evidence. The Court can make the adjudication on admitted facts or even on the averments made by the resister. Therefore, in my considered view, if we take into account the ratio laid down by the Apex Court in this ruling, it is clear that there is no perversity in the findings recorded by the lower appellate Court while relying upon the averments made in the application by the appellants. It also cannot be overlooked that though other documents are not clearly referred to, the documents of tax receipts are taken into account. Moreover, the appellate Court has basically founded his findings on the fact that the appellants failed to show even the statement in the application filed by them that they were claiming independent mundkarial right over the suit structure.

6. Be as it may, on perusal of the orders of both the Courts below, I do not see any perversity committed by them while recording concurrent

findings in this matter. In the result, the appeal has no merits and stands dismissed with no order as to costs. Consequently, civil application no. 199 of 2006 also stands dismissed.

P.V. KAKADE, J.

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